

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments claim 21 is amended, whereby claims 21-43 will continue to be pending, claims 21 and 38 being independent claims.

Support for amended claim 21 can be found throughout the present specification.

It is pointed out that the amendment to claim 21 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute this claim in its original, unamended form in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has withdrawn the rejections under 35 U.S.C. § 102(b) and § 103(a) over Wagner et al., U.S. Patent No. 5,951,991 set forth in the previous Office Action.

Claims 21-43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaneda et al., US 2001/0046948 (hereafter “KANEDA”) in view of McAtee et al., US 2002/0009484 (hereafter “McATEE”).

Claims 21-25, 27, 29-35, 38, 39 and 42 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Drucks et al., US 2002/0102289 (hereafter “DRUCKS”).

Claims 26, 28, 36, 37, 40, 41 and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly

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being unpatentable over DRUCKS in view of McATEE.

Claims 21-24, 27, 28 and 31-37 are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lee et al., U.S. Patent No. 6,992,054 (hereafter “LEE”).

Claims 25 and 26 are newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over LEE in view of McATEE.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejections of Claims under 35 U.S.C. § 103(a) over KANEDA in View of McATEE

Claims 21-43, i.e., all claims of record, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over KANEDA in view of McATEE. The rejection essentially alleges again that KANEDA discloses all of the elements which are recited in the present claims with the exception of “an emulsion comprising acylamino acid surfactants like sodium cocoylglutamate, sulfosuccinates, or olefin sulfonates as the specific anionic surfactants, and alkyl polyglycosides as the specific nonionic surfactants, the presence of polyquaternium film former, and the proportions of water in amounts as those recited”. Page 4, first paragraph of the present Office Action. In view thereof, the Examiner relies on McATEE and asserts, *inter alia*, that McATEE would allegedly have rendered it obvious to one of ordinary skill in the art “to substitute the polyoxyalkylene fatty acid esters of [KANEDA] with alkyl polyglucosides, like decyl polyglucoside and lauryl polyglucoside, because

the substitution of art recognized equivalents as shown by [McATEE] is within the level of ordinary skill in the art”.

Applicants respectfully traverse this rejection for all of the reasons which have been set forth in response to the previous Office Action. The corresponding remarks are incorporated herein. Regarding the present claims, it is noted that present independent claim 21 recites, *inter alia*, that the cleansing preparation is foaming and comprises (i) at least one anionic surfactant selected from acylamino acid surfactants, sarcosinates, sulfosuccinate citrates, monoalkylphosphates, and olefin sulfonates, and (ii) at least one nonionic surfactant selected from alkyl polyglycosides.

Regarding the foaming property of the cleansing preparation recited in the present claims it is submitted again that given the fact that the cleansing material (emulsion) of KANEDA has “an excellent cleansing effect on various makeup stains” this document fails to provide any apparent reason for one of ordinary skill in the art to provide a foaming emulsion. Not surprisingly, there is not the slightest indication in KANEDA that the impregnating emulsion of KANEDA is, or preferably should be, foaming. Moreover, according to KANEDA the concentration of the oily component in the emulsion disclosed therein is preferably at least 10 %, more preferably at least 20 % by weight. The compositions of Examples 1-4 of KANEDA relied on by the Examiner all comprise at least 45 % by weight of oily component. It is not seen that with such high concentrations of oily component (and relatively low concentrations of surfactants) it would even be possible to prepare a foaming composition.

It is noted that the Examiner takes the position that KANEDA teaches anionic surfactants like those recited as component (a)(i) in claim 21 and “hence, the emulsion of [KANEDA] should also be foaming because similar anionic surfactants have been utilized”. Page 13, first paragraph of the present Office Action. Applicants submit that this position is without merit. The mere fact that a composition contains an anionic surfactant as recited in present claim 21 is clearly not sufficient to reasonably support the conclusion that the composition is foaming, and neither has the Examiner provided any evidence that each and every composition which contains an anionic surfactant as recited in present claim 21 (in any concentration) is foaming.

Applicants further point out again that none of the compositions of Examples 1-4 of KANEDA specifically relied on by the Examiner contains any of the nonionic and anionic surfactants which are recited in the present claims. Accordingly, it is not seen that the weight ratio of anionic to nonionic surfactants in the Examples of KANEDA renders obvious a weight ratio of anionic and nonionic surfactants which are completely different from the surfactants employed by KANEDA.

It is noted that the Examiner indicates that the Examples of KANEDA were only relied on to show the relationship of the weight ratio of anionic and nonionic surfactants. However, the Examiner has again failed to explain why one of ordinary skill in the art would reasonably assume that the same ratio of anionic and nonionic surfactants as in the Examples of KANEDA should be employed regardless of the specific surfactants used, i.e., even if surfactants which are completely different from the surfactants used in the Examples of KANEDA are employed.

Applicants further submit that the Examiner still has not provided a convincing explanation why McATEE would motivate one of ordinary skill in the art to replace a single one of the several examples of nonionic surfactants set forth in paragraph [0020] of KANEDA, i.e., polyoxyalkylene fatty acid esters (not employed in any of the Examples of KANEDA) by a one of the several nonionic surfactants mentioned in paragraph [0126] of McATEE, i.e., alkyl polyglucosides, and to combine the latter with one or more selected anionic surfactants mentioned in the long list of exemplary anionic surfactants mentioned in paragraph [0020] of KANEDA (none of which is employed in any of the Examples of KANEDA, either).

It also is pointed out again that with the exception of alkoxyated fatty acid esters (assuming, *arguendo*, that they are identical with, or at least similar to polyoxyalkylene fatty acid esters) all of the nonionic lathering surfactants mentioned in paragraph [0126] of McATEE are completely different from the nonionic surfactants mentioned in paragraph [0020] of KANEDA, which is at least a strong indication for one of ordinary skill in the art that the nonionic surfactants of McATEE are not particularly desirable for the purposes for which the nonionic surfactants of KANEDA are to be employed or, in other words, that the (lathering) nonionic surfactants of McATEE are not equivalent to the nonionic surfactants of KANEDA.

It further is noted that the list of preferred nonionic surfactants in paragraph [0131] of McATEE, while including alkyl polyglucosides, does not include alkoxyated fatty acid esters, which is an indication that even for the purposes of McATEE alkyl polyglucosides and alkoxyated fatty acid esters are not equivalent (interchangeable).

Applicants submit that for at least all of the foregoing reasons, KANEDA in view of McATEE is unable to render obvious the subject matter of any of the present claims. Accordingly, withdrawal of the rejection of claims 21-43 under 35 U.S.C. § 103(a) over KANEDA in view of McATEE is warranted, which action is again respectfully requested.

Response to Rejections of Claims under 35 U.S.C. § 103(a) over DRUCKS

Claims 21-25, 27, 29-35, 38, 39 and 42 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over DRUCKS. The Examiner again concedes that DRUCKS fails to disclose “an impregnation solution comprising anionic surfactants like acylamino acid surfactants, sarcosinates or sulfosuccinates; or nonionic surfactants like alkyl polyglycoside; benzoic acid and the ratio of the anionic to nonionic surfactants as those recited” but takes the position that these elements are rendered obvious by DRUCKS.

This rejection is respectfully traversed again, for all of the reasons which are set forth in the response to the previous Office Action. The corresponding remarks are incorporated herein.

Applicants submit that it is only with hindsight that one can conclude that DRUCKS provides an apparent reason for one of ordinary skill in the art to employ mixtures of surfactants which belong to different classes and in particular, to combine nonionic and anionic surfactants.

While the reference to “one or more” surfactants in paragraph [0032] of DRUCKS particularly relied on by the Examiner in this regard does not exclude the use of surfactants from more than one of the four different classes of surfactants mentioned by DRUCKS (i.e., nonionic,

anionic, cationic and amphoteric), one cannot ignore the fact that none of the almost 20 exemplified compositions of DRUCKS contains different classes of surfactants, let alone a combination of anionic and nonionic surfactants (which is only one of altogether 6 possible binary combinations), although all of the surfactant containing compositions appear to contain at least two surfactants.

One also cannot ignore the fact all of the surfactants which are employed in the Examples of DRUCKS appear to be exclusively nonionic surfactants and in particular, nonionic surfactants which are completely unrelated to alkyl polyglycosides. For example, none of the three nonionic surfactants used in the composition of Example 12 of DRUCKS specifically relied on by the Examiner (cetareth-20, glyceryl stearate and stearyl alcohol) bears any structural or other resemblance to any of the surfactants which are recited in the present claims.

Moreover, in paragraphs [0034] to [0069] thereof DRUCKS mentions (considerably) more than 100 examples of specific surfactants and classes of surfactants which may be employed, giving rise to thousands of possible combinations of surfactants, without providing any indication whatsoever that a combination of different classes of surfactants and in particular, of nonionic and anionic surfactants, results in any advantages, let alone that combinations of alkyl polyglycosides with one or more of the anionic surfactants recited in present claim 21 are advantageous. One the contrary, what one can conclude from the Examples of DRUCKS is that while the use of more than one (nonionic) surfactant may generally be desirable, the use of different classes of surfactants does not provide any advantages. Accordingly, DRUCKS is far from providing an apparent reason for one of ordinary skill in the art to employ a mixture of different classes of surfactants and in

particular, nonionic and anionic surfactants, let alone teaches or suggests employing the combination of specific surfactants recited in present claim 21.

It further is not seen that DRUCKS teaches or suggests that the weight ratio of (any) two different classes of surfactants (such as, e.g., anionic and nonionic surfactants) is a result-effective variable, wherefore the question arises what would have prompted one of ordinary skill in the art to optimize a weight ratio of the anionic surfactants recited in the present claims to nonionic surfactants and in particular, alkyl polyglycosides to arrive at the weight ratios recited in, e.g., present claims 22 and 23.

Applicants submit that for at least all of the foregoing reasons, the rejection of claims 21-25, 27, 29-35, 38, 39 and 42 under 35 U.S.C. § 103(a) over DRUCKS is without merit, wherefore withdrawal thereof is again respectfully requested as well.

Response to Rejections of Claims under 35 U.S.C. § 103(a) over DRUCKS in View of McATEE

Claims 26, 28, 36, 37, 40, 41 and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over DRUCKS in view of McATEE. The rejection again concedes that DRUCKS fails to disclose “sodium cocoylglutamate as the specific anionic surfactant, and the incorporation of polyquaternium film former” but again alleges that this deficiency of DRUCKS is cured by McATEE.

Applicants respectfully traverse this rejection as well. In particular, it is noted again that claims 26, 28, 36, 37, 40, 41 and 43 are dependent claims and are thus, not rendered obvious for at least all of the reasons which are set forth with respect to the rejection of independent claims 21 and 38 in view of DRUCKS.

It further is not seen what would have motivated one of ordinary skill in the art wishing to modify the wipes of DRUCKS to look for further examples of one of the types of anionic surfactants disclosed therein (i.e., surfactants which are neither particularly recommended by, nor employed in any of the exemplified compositions of, DRUCKS) and to pick and choose one specific anionic surfactant which is mentioned in McATEE as a member of a laundry list of anionic surfactants which can be used for the wipes disclosed therein and is not employed in any of the many exemplified compositions of McATEE (in fact, none of these exemplified compositions contains a surfactant which is structurally related to sodium cocoylglutamate).

Applicants submit that for at least all of the foregoing reasons, the rejection of claims 26, 28, 36, 37, 40, 41 and 43 under 35 U.S.C. § 103(a) over DRUCKS in view of McATEE is without merit as well, wherefore withdrawal thereof is again respectfully requested.

Response to Rejections of Claims under 35 U.S.C. § 103(a) over LEE (in View of McATEE)

Claims 21-24, 27, 28 and 31-37 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over LEE and claims 25 and 26 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over LEE in view of McATEE.

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Applicants respectfully disagree with the allegations which are set forth in the present Office Action in this regard. Nevertheless, independent claim 21 has been amended to recite the lower value of the concentration range for water which is also recited in claim 29 (50 % by weight). Since claim 29 has not been rejected over LEE or over LEE in view of McATEE, these rejections are moot.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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